

AUDREY MACHNIK, as Representative of the
Estate of MICHAEL MACHNIK, Individually
and on Behalf of All Others Similarly Situated,

Plaintiff,

v.

ASCENSIONPOINT RECOVERY SERVICES,
LLC,

Defendant.

Case No.: 18-cv-1375

CLASS ACTION COMPLAINT

Jury Trial Demanded

1. This class action seeks redress for collection practices that violate the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (the “FDCPA”).

2. The court has jurisdiction to grant the relief sought by the Plaintiff pursuant to 15 U.S.C. § 1692k and 28 U.S.C. §§ 1331 and 1337. Venue in this District is proper in that Defendant directed its collection efforts into the District.

3. Plaintiff Audrey Machnik (“Plaintiff”) is an individual who resides in the Eastern District of Wisconsin (Milwaukee County). She is the surviving spouse of Michael Machnik (“Machnik”).

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5. Defendant AscensionPoint Recovery Services, LLC (“AscensionPoint”) is a foreign limited liability company with its primary offices located at 200 Coon Rapids Blvd., Suite 200, Coon Rapids, Minnesota 55433.

6. AscensionPoint does substantial business in Wisconsin and has designated its registered agent in Wisconsin for the service of process as Corporation Service Company, 8040 Excelsior Drive, Suite 400, Madison, Wisconsin 53717.

7. AscensionPoint is engaged in the business of a collection agency, using the mails and telephone to collect consumer debts originally owed to others.

8. AscensionPoint is engaged in the business of collecting debts owed to others and incurred for personal, family, or household purposes.

9. AscensionPoint is a debt collector as defined in 15 U.S.C. § 1692a.

FACTS

10. On or around July 11, 2018, AscensionPoint mailed a debt collection letter to Plaintiff, addressed to “Estate of MICHAEL J. MACHNIK,” regarding an alleged debt. A copy of this letter is attached to this complaint as Exhibit A.

11. Exhibit A does not identify the specific debt or debts it is attempting to collect.

12. Exhibit A does not identify the creditor or creditors on whose behalf AscensionPoint is collecting.

13. Upon information and belief, before his death on August 19, 2017 all of Michael Machnik’s debts were incurred for personal, family, or household purposes, and were primarily medical debts.

14. Upon information and belief, AscensionPoint is attempting to collect Michael Machnik’s medical debts from his estate.

15. Michael Machnik's estate has no assets and is not able to satisfy any debts.
16. Plaintiff Audrey Machnik received Exhibit A from AscensionPoint at her home address.
17. Upon information and belief, Exhibit A is a form letter, generated by a computer, and with the information specific to Plaintiff inserted by the computer.
18. Upon information and belief, Exhibit A is a form debt collection letter, used by Defendant to attempt to collect alleged debts.
19. Upon information and belief, Exhibit A is the first written communication AscensionPoint mailed to Plaintiff regarding this alleged debt.
20. Exhibit A is clearly a communication "in connection with the collection of any debt." Exhibit A specifically requests that the party responsible for paying the debts of the estate contact AscensionPoint's office. Exhibit A also uses the term "outstanding bills" four times.
21. The unsophisticated consumer would understand Exhibit A to be attempting to collect debts of the estate.
22. Exhibit A does not include the 15 U.S.C. § 1692g(a) notice, which requires:
 - (a) **Notice of debt; contents**
Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing—
 - (1) the amount of the debt;
 - (2) the name of the creditor to whom the debt is owed;
 - (3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

23. Exhibit A also does not include the disclosure required by 15 U.S.C. § 1692e(11):

The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action

24. Plaintiff was deceived, misled, and confused by Exhibit A. Plaintiff had to spend time and money investigating Exhibit A, and the consequences of any potential responses to Exhibit A.

25. The unsophisticated consumer would be deceived, misled, and confused by Exhibit A.

The FDCPA

26. The FDCPA creates substantive rights for consumers; violations cause injury to consumers, and such injuries are concrete and particularized. *Pogorzelski v. Patenaude & Felix APC*, No. 16-C-1330, 2017 U.S. Dist. LEXIS 89678 *9 (E.D. Wis. June 12, 2017) (“A plaintiff who receives misinformation from a debt collector has suffered the type of injury the FDCPA was intended to protect against.”); *Spuhler v. State Collection Servs.*, No. 16-CV-1149, 2017 U.S. Dist. LEXIS 177631 (E.D. Wis. Oct. 26, 2017) (“As in *Pogorzelski*, the Spuhlers’ allegations that the debt collection letters sent by State Collection contained false representations

of the character, amount, or legal status of a debt in violation of their rights under the FDCPA sufficiently pleads a concrete injury-in-fact for purposes of standing.”); *Lorang v. Ditech Fin. LLC*, 2017 U.S. Dist. LEXIS 169286, at *6 (W.D. Wis. Oct. 13, 2017) (“the weight of authority in this circuit is that a misrepresentation about a debt is a sufficient injury for standing because a primary purpose of the FDCPA is to protect consumers from receiving false and misleading information.”); *Qualls v. T-H Prof’l & Med. Collections, Ltd.*, 2017 U.S. Dist. LEXIS 113037, at *8 (C.D. Ill. July 20, 2017) (“Courts in this Circuit, both before and after *Spokeo*, have rejected similar challenges to standing in FDCPA cases.”) (citing “*Hayes v. Convergent Healthcare Recoveries, Inc.*, 2016 U.S. Dist. LEXIS 139743 (C.D. Ill. 2016)); *Long v. Fenton & McGarvey Law Firm P.S.C.*, 223 F. Supp. 3d 773, 777 (S.D. Ind. Dec. 9, 2016) (“While courts have found that violations of other statutes . . . do not create concrete injuries in fact, violations of the FDCPA are distinguishable from these other statutes and have been repeatedly found to establish concrete injuries.”); *Quinn v. Specialized Loan Servicing, LLC*, No. 16 C 2021, 2016 U.S. Dist. LEXIS 107299 *8-13 (N.D. Ill. Aug. 11, 2016) (rejecting challenge to Plaintiff’s standing based upon alleged FDCPA statutory violation); *Lane v. Bayview Loan Servicing, LLC*, No. 15 C 10446, 2016 U.S. Dist. LEXIS 89258 *9-10 (N.D. Ill. July 11, 2016) (“When a federal statute is violated, and especially when Congress has created a cause of action for its violation, by definition Congress has created a legally protected interest that it deems important enough for a lawsuit.”); *Church v. Accretive Health, Inc.*, No. 15-15708, 2016 U.S. App. LEXIS 12414 *7-11 (11th Cir. July 6, 2016) (same); *see also Mogg v. Jacobs*, No. 15-CV-1142-JPG-DGW, 2016 U.S. Dist. LEXIS 33229, 2016 WL 1029396, at *5 (S.D. Ill. Mar. 15, 2016) (“Congress does have the power to enact statutes creating legal rights, the invasion of which creates standing, even though no injury would exist without the statute,” (quoting *Sterk v. Redbox Automated*

Retail, LLC, 770 F.3d 618, 623 (7th Cir. 2014)). For this reason, and to encourage consumers to bring FDCPA actions, Congress authorized an award of statutory damages for violations. 15 U.S.C. § 1692k(a).

27. Moreover, Congress has explicitly described the FDCPA as regulating “abusive practices” in debt collection. 15 U.S.C. §§ 1692(a) – 1692(e). Any person who receives a debt collection letter containing a violation of the FDCPA is a victim of abusive practices. *See* 15 U.S.C. §§ 1692(e) (“It is the purpose of this subchapter to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses”).

28. 15 U.S.C. § 1692e generally prohibits a debt collector from using “any false, deceptive, or misleading representation or means in connection with the collection of any debt.”

29. 15 U.S.C. § 1692e(5) specifically prohibits debt collectors from making a “threat to take any action that cannot legally be taken or that is not intended to be taken.”

30. 15 U.S.C. § 1692e(10) specifically prohibits the “use of any false representation or deceptive means to collect or attempt to collect any debt.”

31. 15 U.S.C. § 1692f generally prohibits “unfair or unconscionable means to collect or attempt to collect any debt.”

32. 15 U.S.C. § 1692g(a) provides:

(a) Notice of debt; contents

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing—

(1) the amount of the debt;

(2) the name of the creditor to whom the debt is owed;

(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

COUNT I – FDCPA

33. Plaintiff incorporates by reference as if fully set forth herein the allegations contained in the preceding paragraphs of this Complaint.

34. Exhibit A is the first written communication that Defendant sent to Plaintiff,

35. Exhibit A does not include the validation notice required by 15 U.S.C. § 1692g(a).

36. Plaintiff did not receive any subsequent written communication from Defendant which included the validation notice required by 15 U.S.C. § 1692g(a).

37. Failure to provide the validation notice required by 15 U.S.C. § 1692g(a) is also a false representation or deceptive means to collect a debt.

38. Defendant has violated 15 U.S.C. §§ 1692g(a), 1692e, and 1692e(10).

COUNT II – FDCPA

39. Plaintiff incorporates by reference as if fully set forth herein the allegations contained in the preceding paragraphs of this Complaint.

40. Exhibit A does not include the disclosure required by 15 U.S.C. § 1692e(11).

41. Defendant violated 15 U.S.C. §§ 1692e and 1692e(11).

CLASS ALLEGATIONS

42. Plaintiff brings this action on behalf of a Class, consisting of (a) all natural persons in the State of Wisconsin (b) who were sent a collection letter in the form represented by Exhibit A to the complaint in this action, (c) seeking to collect a debt for personal, family or household purposes, (d) between September 5, 2017 and September 5, 2018, inclusive, (e) that was not returned by the postal service.

43. The Class is so numerous that joinder is impracticable. Upon information and belief, there are more than 50 members of the Class.

44. There are questions of law and fact common to the members of the class, which common questions predominate over any questions that affect only individual class members. The predominant common question is whether the Defendant complied with the FDCPA.

45. Plaintiff's claims are typical of the claims of the Class members. All are based on the same factual and legal theories.

46. Plaintiff will fairly and adequately represent the interests of the Class members. Plaintiff has retained counsel experienced in consumer credit and debt collection abuse cases.

47. A class action is superior to other alternative methods of adjudicating this dispute. Individual cases are not economically feasible.

JURY DEMAND

48. Plaintiff hereby demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that the Court enter judgment in favor of Plaintiff and the Class and against Defendant for:

(a) actual damages;

- (b) statutory damages;
- (c) attorneys' fees, litigation expenses and costs of suit; and
- (d) such other or further relief as the Court deems proper.

Dated: September 5, 2018

ADEMI & O'REILLY, LLP

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